APPENDIX.

IN THE

Supreme Court of the United States

October Term, 1976
No. 76-99

OCCIDENTAL LIFE INSURANCE COMPANY OF CALIFORNIA,

Petitioner,

vs.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITION FOR CERTIORARI FILED JULY 23, 1976.
CERTIORARI GRANTED DECEMBER 13, 1976.

APPENDIX

Chronological List of Relevant Docket Entries in Ninth Circuit.

January 31, 1975—EEOC Files Notice of Appeal of District Court Ruling

May 19, 1975—EEOC Brief Filed

June 30, 1975—Occidental Brief Filed

July 16, 1975—EEOC Reply Brief Filed

January 6, 1976—Oral Argument Held

May 11, 1976—Ninth Circuit's Opinion and Judgment Entered

CHARGE OF DISCRIMINATION

(If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

(PLEASE PRINT OR TYPE)

This form is used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Date ... Case File No. [illegible]

1 Your Name (Mr., Mrs., Miss) TAMAR EDELSON Phone Number 552-1372

Street Address 167 DOLORES STREET

City SAN FRANCISCO State CALIFORNIA Zip Code 94103

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)

Race or Color ☐ Religious Creed ☐ National Origin ☐ Sex ☑

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name OCCIDENTAL LIFE INSURANCE CO. of CALIFORNIA

Street address 433 CALIFORNIA STREET Room 600

City SAN FRANCISCO State CALIFORNIA Zip Code 94104

AND (other parties if any)

HOME OFFICE LOCATED AT OCCIDENTAL CENTER, LOS ANGELES, CA.
(P.O. BOX 1031, Terminal Annex,
Los Angeles, California)

4 Have you filed this charge with a state or local government agency? Yes ☐ When month day year No ☐

5 If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☑

6 The most recent date on which this discrimination took place: Month October Day 1 Year 1970

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

Occidental Life Insurance Co. refused to grant me a maternity leave and instead suggested that I re-apply for my job with resultant loss of insurance and vacation benefits as well as seniority. I did not receive any pregnancy benefits as I had not worked in the company for 2 consecutive years. However, in the same situation the wife of a male employee would have received full coverage as male employees are eligible for these benefits after working for the company for only three months.

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date 12/27/70 Tamar Edelson
(Sign your name)

Subscribed and sworn to before me this 27 day of December 1970

Notary Public
(Month, day, year)

It is relevant for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

FORM APPROVED BUDGET BUREAU NO. 124 R0001 FORM OEO-5 (REV. 3-70)

Exhibit "A"

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Affidavit of Dennis H. Vaughn in Support of Defendant's Motion for Summary Judgment.

United States District Court, Central District of California.

Equal Employment Opportunity Commission, Plaintiff, vs. Occidental Life Insurance Company of California, Defendant. Case No. CV 74-1698-AAH.

Filed: Nov. 8, 1974.

State of California, County of Los Angeles—ss.

Dennis H. Vaughn, being duly sworn, deposes and says:

I am a member of the law firm of Paul, Hastings, Janofsky & Walker, am duly admitted to practice before this Court, and am counsel of record for the Defendant in this case.

Attached hereto, marked as Exhibit "A", and incorporated herein by reference, is a true and correct copy of the Charge of Discrimination, dated December 27, 1970, filed with Plaintiff by the Charging Party herein, Tamar Edelson, against Defendant. In a telephone conversation on October 1, 1974, Jean Hagins, an attorney with the Equal Employment Opportunity Commission Litigation Center in San Francisco, California, advised affiant that said charge was received by Plaintiff on or about December 30, 1970 and was formally filed with Plaintiff on or about March 9, 1971.

The Findings of Fact on said charge, issued by the District Director of the Equal Employment Opportunity Commission on or about February 25, 1972, found that the Charging Party, Tamar Edelson, had

voluntarily terminated her employment with Defendant on or about September 9, 1971.

In a telephone conversation on September 3, 1974 with Elizabeth Leavey, an attorney with the Equal Employment Opportunity Commission Litigation Center in San Francisco, California, Ms. Leavey advised affiant that no notice of the type specified in Section 706(f)(1) of Title VII of the Civil Rights Act of 1964 was given by Plaintiff to the Charging Party herein, Tamar Edelson.

Dated: November 6, 1974.

/s/ Dennis H. Vaughn
Dennis H. Vaughn

Sworn to and subscribed before me this 6th day of November, 1974.

/s/ Irene Hansen
Notary Public in and for
said State and County

[Seal]

Affidavit of Jules H. Gordon in Support of Plaintiff Opposition to Defendants Motion for Summary Judgment or, in the Alternative Partial Summary Judgment.

In the United States District Court for the Central District of California.

Equal Employment Opportunity Commission, Plaintiff, v. Occidental Life Insurance Company of California, Defendant. Civil Action No. 74-1698 AAH.

Filed: Nov. 26, 1974.

Jules H. Gordon, being first duly sworn deposes and says:

1. I am an employee of the United States Government, Equal Employment Opportunity Commission, (hereinafter the Commission), serving as Associate Regional Attorney at the Commission's San Francisco Regional Litigation Center.

2. I have been employed by the Commission for more than 8 years and have previously served as Director of the Commission's San Francisco District Office out of which office this case arose.

3. By virtue of the employment stated above I am familiar with the administrative file relating to the charge of discrimination in violation of Title VII filed with the Commission against the Occidental Insurance Company of California by Tamar Edelson on March 9, 1971 (Charge Number TSF1-0634).

4. I have examined the files relating to Charge Number TSF1-0634 for the purpose of this affidavit; The file contains the following information.

A. Charge Number TSF1-0634 was filed with the San Francisco District Office of the Commis-

sion on March 9, 1971. At that time there were approximately 1000 charges pending investigation in that office which had about 8 investigators on its staff. Investigation was commenced by service of the charge on August 16, 1971.

B. On February 25, 1972 after the charge was investigated by the Commission a copy of the Commission's proposed Finding of Facts was sent to Occidental Insurance Company.

C. On March 23, 1972 Occidental responded to the Commission's proposed Finding of Facts stating its exceptions thereto.

D. On July 13, 1972 the Commission wrote Occidental inviting it to participate in pre-determination conciliation discussions. Occidental entered into such discussions and the issuance of a Commission Determination was stayed pending the outcome of the pre-determination conciliation efforts.

E. On October 20, 1972 these initial conciliation efforts were deemed unsuccessful.

F. On February 2, 1973 a letter of determination (See Exhibit 1 attached) was issued by the Commission which found reasonable cause as to the charge and as to other violations of Title VII so related to the charge as to be appropriate for determination under the regulations of the Commission.

G. Occidental was at that time invited to [sic] upon the Determination.

H. On February 26, 1973 Occidental responded to this invitation, expressing its interest in continuing discussions and informing the Commission that the matter had been referred to its law firm, Paul, Hastings, Janofsky, & Walker.

I. On March 20, 1973 Dennis Vaughn wrote the District Office's conciliator suggesting that further conciliation efforts should be with the Commission's General Counsel. (See letter, attachment 2)

J. On July 9, 1973, Mr. Vaughn and a number of officials of Occidental met with a Commission conciliator at the Commission's offices in San Francisco. According to the notes of the conciliator, at that time Mr. Vaughn requested that all conciliation efforts be suspended until a definitive ruling by the United States Supreme Court had been handed down which would be dispositive of the principal issues.

K. On September 13, 1973 after further correspondence with Occidental, the Commission concluded that conciliation efforts had failed and so notified Occidental.

L. On September 13, 1973 the conciliator informed the Charging Party Tamar Edelson that conciliation had failed and the Charging Party orally requested that the case be referred to the Commission's [sic]

5. There is no indication in the administrative file that Tamar Edelson ever requested or was denied the issuance of a "right to sue" letter relating to this charge.

6. There is nothing in the administrative file indicating that Occidental disputed the Commission's jurisdiction on the grounds of timeliness or asserted that the Commission's time to complete the administrative process had expired.

Dated: November 24, 1974

/s/ Jules H. Gordon
JULES H. GORDON

Sworn to and subscribed before me this 24 day of November 1974.

/s/ Erica Black Grubb
Notary Public
State of California
County of San Francisco

[Seal]

Complaint.

In the United States District Court for the Northern District of California.

Equal Employment Opportunity Commission, Plaintiff, vs. Occidental Life Insurance Company of California, Defendant. C 74 0427 ACW

JURISDICTION AND VENUE

Filed: February 22, 1974.

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 451, 1343, and 1345. This is an action authorized and instituted pursuant to Section 706(f) (1) and (3) and (g) of Title VII of the Civil Rights Act of 1964, 42 U. S. C. Section 2000e *et seq.*, as amended, 42 U. S. C. Section 2000e *et seq.* (Supp II, 1972), hereinafter referred to as "Title VII."

2. The unlawful employment practices alleged below were and are now being committed within the State of California and the Northern Judicial District of California.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission, (hereinafter referred to as the "Commission"), is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action under the provisions of Section 706(f) (1), 42 USC 2000e-5 (f) (1).

4. Since at least July 2, 1965, Defendant Occidental Life Insurance Company of California (hereinafter referred to as the "Defendant"), has continuously

been and is now a corporation doing business in San Francisco and elsewhere in California, where Defendant is engaged in the business of selling and servicing insurance policies across state lines, and has continuously and does now employ more than twenty-five employees.

5. Since at least July 2, 1965, Defendant has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. Section 2000e(b), (g) and (h).

STATEMENT OF CLAIM

6. On or about March 9, 1971 a charge was filed with the Commission alleging that Defendant had engaged in unlawful practices under Title VII.

7. The Commission, after investigating and finding reasonable cause to believe that Defendant had engaged in unlawful employment practices, has been unable, through informal methods of conference, conciliation and persuasion, to secure a conciliation agreement acceptable to it.

8. Since at least July 2, 1965 and continuously up until the present time Defendant has intentionally engaged in unlawful employment practices in violation of Section 703 of Title VII, including but not limited to the following:

(a) Defendant discriminates against women employees because of their sex by failing and refusing to treat pregnancy-related disabilities in the same manner

as other temporary disabilities, as exemplified by Defendant's policies and practices involving such matters as the availability, commencement and duration of leave, the accrual and retention or seniority and other benefits and privileges of employment, reinstatement and benefits available in connection with employment under the company's health insurance and sick leave benefits plans, as applied to pregnant employees.

(b) Defendant discriminates against women employees, because of their sex, by limiting pregnancy-related benefits under the Company's health insurance plan to married employees.

(c) Defendant discriminates against women employees because of their sex by maintaining discriminatory provisions in its health insurance and life insurance plans, both of which provide that where a husband and wife are both employees of Defendant, only the husband can provide coverage for their dependent children under such plans.

9. Since at least July 2, 1965 and continuously up until August of 1971, Defendant intentionally discriminated against individuals because of their sex in violation of Section 703 of Title VII, by

(a) providing pregnancy-related fringe benefits to wives of male employees under more favorable terms than to female employees, thereby discriminating against women employees because of their sex.

(b) denying regularly scheduled salary increases to women employees in accordance with Defendant's pol-

icy of requiring pregnant employees to terminate their employment at the end of a fixed number of months of their pregnancy, thereby discriminating against women employees because of their sex,

(c) limiting the option of early retirement to women employees, thereby discriminating against male employees because of their sex.

10. The effect of the policies and practices complained of in paragraphs 8 and 9 above has been to deprive individuals of equal employment opportunities and otherwise adversely effect [sic] their status as employees because of their sex.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully prays that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, agents employees, successors, assigns and all persons in active concert or participation with it from engaging in any employment practice which discriminates because of sex.

B. Order Defendant to institute and carry out policies, practices and affirmative action programs which provide equal employment opportunities for individuals and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make whole those persons adversely affected by the unlawful employment practices described above, by providing appropriate back pay, with interest, in an amount to be proved at trial and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Grant such further relief as the Court deems necessary and proper.

E. Award the Commission its costs in this action.

Respectfully submitted,

WILLIAM A. CAREY
General Counsel

WILLIAM ROBINSON
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1206 New Hampshire Avenue, N. W.
Washington, D. C. 20506
Telephone: (202) 343-3234

JULES H. GORDON
Associate Regional Attorney

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/s/ Chris Roggerson

CHRIS ROGGERSON
Regional Attorney

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Fox Plaza, Suite 1010, 1390 Market Street
San Francisco, California 94102
Telephone: (415) 556-5876

First Amended Answer to Complaint.

United States District Court, Northern District of California.

Equal Employment Opportunity Commission, Plaintiff, vs. Occidental Life Insurance Company of California, Defendant. Civil Action No. C 74 0427 ACW.

Filed: May 8, 1974.

The Defendant, OCCIDENTAL LIFE INSURANCE COMPANY OF CALIFORNIA, a corporation, answering Plaintiff's Complaint herein, admits, denies, and alleges as follows:

1. Answering Paragraph 1, Defendant denies generally and specifically each and all of the allegations therein contained.

2. Answering Paragraph 2, Defendant denies generally and specifically each and all of the allegations therein contained.

3. Answering Paragraph 3, Defendant admits that Plaintiff is an agency of the United States of America. Except as specifically so admitted, Defendant denies generally and specifically each and all of the remaining allegations contained in said paragraph.

4. Answering Paragraph 4, Defendant admits the allegations therein contained.

5. Answering Paragraph 5, Defendant admits the allegations therein contained.

6. Answering Paragraph 6, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth thereof.

7. Answering Paragraph 7, Defendant admits that Plaintiff investigated a charge against Defendant filed with Plaintiff on or about March 9, 1971, that Plaintiff

issued a determination that there was reasonable cause to believe that said charge was true, that Plaintiff thereafter conferred with Defendant with respect to said charge, and that no Conciliation Agreement was agreed upon between Plaintiff and Defendant with respect to said charge. Except as specifically so admitted, Defendant denies generally and specifically each and all of the remaining allegations contained in said paragraph.

8. Answering Paragraph 8, Defendant denies generally and specifically each and all of the allegations therein contained.

9. Answering Paragraph 9, Defendant denies generally and specifically each and all of the allegations therein contained.

10. Answering Paragraph 10, Defendant denies generally and specifically each and all of the allegations therein contained.

FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

11. The Complaint herein fails to state a claim upon which relief may be granted.

FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

12. The Court has no jurisdiction of the subject matter of the Complaint herein.

FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

13. The Complaint herein was not filed within the time limitations specified in Title VII of the Civil

Rights Act of 1964, as amended (42 U.S.C. §2000(e) et seq.).

FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

14. The Complaint herein fails to allege with specificity that Plaintiff has complied with all of the statutory prerequisites contained in Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000(e) et seq.) to the bringing of this action.

FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

15. Plaintiff has failed to comply with all of the statutory prerequisites contained in Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000(e) et seq.) to the bringing of this action.

FOR A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

16. Plaintiff has failed to allege in its Complaint herein the basis of the original, underlying charge filed with it against Defendant upon which said Complaint is purportedly based.

FOR A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

17. The allegations contained in the Complaint herein are outside of the scope of the original, underlying charge filed with Plaintiff against Defendant and upon which said Complaint is purportedly based.

FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

18. Defendant's employment policies and insurance plans complained of in the Complaint herein constitute,

and/or are based upon, bona fide occupational qualifications under Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000(e) et seq.).

FOR A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

19. Defendant's employment policies and insurance plans complained of in the Complaint herein are based on and justified by business necessity.

FOR A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

20. Plaintiff has waived any right to bring this action by its prior entry into a Conciliation Agreement with Defendant wherein Plaintiff dropped certain of the allegations contained in the Complaint herein.

FOR AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

21. Plaintiff is estopped from bringing this action because of its prior entry into a Conciliation Agreement with Defendant wherein Plaintiff dropped certain of the allegations contained in the Complaint herein.

FOR A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

22. Plaintiff and Defendant have previously reached an accord and satisfaction concerning certain of the allegations asserted in the Complaint herein.

FOR A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

23. The acts and omissions complained of in the Complaint herein were done by Defendant, if at all,

in good faith and in conformity with, and in reliance upon, written interpretations and/or opinions of Plaintiff.

WHEREFORE, Defendant prays judgment as follows:

1. That the Complaint be dismissed;

2. That Plaintiff take nothing from its cause herein;

3. That Defendant be awarded its attorneys' fees pursuant to Section 706(k) of Title VII of the Civil Rights Act of 1964, amended;

4. That Defendant be awarded its costs of suit herein; and

5. For such further relief as the court may deem appropriate.

DATED: May 6, 1974

PAUL, HASTINGS, JANOFSKY
& WALKER
DENNIS H. VAUGHN
HOWARD C. HAY
/s/ By Dennis H. Vaughn
Dennis H. Vaughn
Attorneys for Defendant
Occidental Life Insurance
Company of California

Findings of Fact and Conclusions of Law (Rule 3(g) Local Rules of the Central District of California).

United States District Court, Central District of California.

Equal Employment Opportunity Commission, Plaintiff, vs. Occidental Life Insurance Company of California, Defendant. Case No. CV 74-1698-AAH.

Filed: Dec. 9, 1974.

This cause came on regularly for hearing on the Motion of Defendant OCCIDENTAL LIFE INSURANCE COMPANY OF CALIFORNIA, for Summary Judgment, or in the alternative Partial Summary Judgment, on November 25, 1974, before the Court, the Honorable A. Andrew Hauk, Judge presiding. Paul, Hastings, Janofsky & Walker, by Dennis H. Vaughn, appeared as counsel for Defendant, and Jean A. Hagins appeared as counsel for Plaintiff. The Court having read the papers, and having heard the arguments propounded by the respective parties, and the cause having been submitted for decision, the Court being fully advised makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. This action is based on a charge of discrimination filed with the Equal Employment Opportunity Commission (hereinafter referred to as "Plaintiff" or "EEOC") on March 9, 1971 by a married female employee who allegedly had been terminated by Defendant on or about September 30, 1971. That charge alleged that the Charging Party had been denied benefits which were afforded by Defendant to male employees and further that the Charging Party had been terminated because of her pregnancy.

2. The Complaint herein was filed on February 22, 1974, in the Northern District of California, and by order of that Court, upon motion by Defendant, transferred to this Court pursuant to 28 U.S.C. §1404 (a) on May 29, 1974. The Complaint alleges, *inter alia*, acts of discrimination by Defendant against unmarried female employees, acts of discrimination by Defendant against male employees concerning retirement benefits, and acts of discrimination by Defendant which admittedly ceased in August 1971.

CONCLUSIONS OF LAW

1. Plaintiff instituted this action for alleged violations of Title VII of the Civil Rights Act of 1964, as amended. 42 U.S.C. §2000(e) *et seq.* (hereinafter referred to as "Title VII").

2. Defendant is an employer engaged in an industry affecting commerce within the meaning of Section 701 (b) of Title VII.

3. Plaintiff's action herein was instituted under Section 706(f)(1) of Title VII, which provides, in relevant part:

> . . . if within [180] days from the filing of such charge . . . the Commission has not filed a civil action under this section . . ., the Commission . . . shall so notify the person aggrieved and within [90] days from the giving of such notice a civil action may be brought against the respondent named in the charge . . . by the person claiming to be aggrieved . . .

4. Section 706(f)(1) of Title VII requires the EEOC to institute court action within 180 days from the filing of the charge of discrimination sued upon,

or, in the case of charges pending at the time the EEOC was empowered to sue on its own by the 1972 amendments which became effective on March 24, 1972, within 180 days of March 24, 1972. *EEOC v. Cleveland Mills Company*, 364 F. Supp. 1235 (W.D. N.C. 1973), *rev'd*, 8 EPD ¶9602 (C.A. 4, 1974); *EEOC v. Louisville & Nashville Railroad Company*, 368 F. Supp. 633 (N.D. Ala. 1974); *EEOC v. Union Oil of California*, 369 F. Supp. 579 (N.D. Ala. 1974); *EEOC v. Griffin Wheel Company*, 7 EPD ¶9202, 7 FEP 484 (N.D. Ala. 1974); *EEOC v. Kimberly-Clark Corp.*, 7 EPD ¶9336, 7 FEP 666 (W.D. Tenn. 1974); *EEOC v. Berman Bros. Iron & Metal Co.*, 7 EPD §9212, 8 FEP 96 (N.D. Ala. 1974); *EEOC v. United States Pipe & Foundry Co.*, 8 EPD ¶9446, 7 FEP 977 (N.D. Ala. 1974); *EEOC v. General Dynamics Corp.*, 8 EPD ¶9724, 8 FEP 588 (N.D. Tex. 1974).

5. The Complaint herein was not filed until some 36 months after the filing of said charge of discrimination and some 23 months after March 24, 1972. Accordingly, this action is barred by the 180 day provision set forth in Section 706(f)(1) of Title VII.

6. Since this action is barred by the 180 day provision set forth in Section 706(f)(1) of Title VII, the Court lacks subject matter jurisdiction over this action.

7. Since this action is barred by the 180 day provision set forth in Section 706(f)(1) of Title VII, the Complaint fails to state a claim upon which relief can be granted against Defendant.

8. The California statute of limitations applicable to this action is California Code of Civil Procedure

Section 340(3), which sets forth a one year statute of limitations for such actions.

9. Since this action was not filed within one year after the alleged discrimination against, and termination of, the Charging Party took place, this action is barred by the California statute of limitations. *EEOC v. Union Oil of California,* 369 F. Supp. 579 (N.D. Ala. 1974).

10. Since this action is barred by the California statute of limitations, this Court has no subject matter jurisdiction over this action.

11. Since this action is barred by the California statute of limitations, the Complaint fails to state a claim upon which relief can be granted against Defendant.

12. The California statute of limitations also bars those violations alleged in paragraph 9 of the Complaint, all of which are alleged to have ceased two and a half years prior to the filing of this action.

13. Since the allegations of paragraph 9 of the Complaint are barred by the California statute of limitations, this Court lacks subject matter jurisdiction over the allegations set forth in paragraph 9 of the Complaint.

14. Since the allegations of paragraph 9 of the Complaint are barred by the California statute of limitations, said allegations fail to state a claim upon which relief can be granted against Defendant.

15. Paragraph 8(b) of the Complaint, alleging discrimination against unmarried female employees, and

paragraph 9(c) of the Complaint, alleging discrimination against male employees concerning retirement benefits, are outside the scope of the underlying charge herein and could not have been raised by the Charging Party, who could not possibly have personally been discriminated against by the aforesaid alleged discriminatory actions because she was a married female employee and thus has no "standing" to raise such allegations. Accordingly, the EEOC has no authority to institute court action concerning said allegations. *Sanchez v. Standard Brands, Inc.,* 431 F.2d 455 (C.A. 5, 1970); *King v. Georgia Power Co.,* 295 F. Supp. 943 (N.D. Ga. 1968); *EEOC v. General Electric Co.,* 376 F. Supp. 757 (W.D. Va. 1974); *Van Hoomissen v. Xerox Corp.,* 497 F.2d 180 (C.A. 9, 1974).

16. Since the EEOC has no authority to institute court action concerning the allegations contained in paragraphs 8(b) and 9(c) of the Complaint, this Court lacks subject matter jurisdiction over said allegations.

17. Since the EEOC has no authority to institute court action concerning the allegations contained in paragraphs 8(b) and 9(c) of the Complaint, said allegations fail to state a claim upon which relief can be granted against Defendant.

18. Section 706(g) of Title VII provides that back pay "shall not accrue from a date more than two years prior to the filing of a charge with the Commission."

19. The charge of discrimination herein was filed on March 9, 1971, yet the Complaint seeks back pay as far back as July 2, 1965.

20. Since the Complaint seeks back pay for a period more than two years prior to the filing of the charge of discrimination on March 9, 1971, the Complaint fails to state a claim upon which relief can be granted against Defendant with respect to back pay for any period prior to March 9, 1969.

21. There is no material issue of fact, and the facts show (a) that the entire Complaint herein is barred by the 180 day provision of Title VII, (b) the entire Complaint herein is barred by the California statute of limitations applicable to such actions, (c) paragraph 9 of said Complaint is barred by the California statute of limitations, (d) paragraphs 8(b) and 9(c) of said complaint are outside the scope of the underlying charge and thus the EEOC lacks authority to sue thereon, and (e) no back pay may be recovered for any period preceding March 9, 1969.

Dated: December 9, 1974.

/s/ A. Andrew Hauk,
United States District Judge

In the United States Court of Appeals, for the Ninth Circuit.

Equal Employment Opportunity Commission, Plaintiff-Appellant, v. Occidental Life Insurance Company of California, Defendant-Appellee. No. 75-1705.

Appeal from the United States District Court for the Central District of California.

Before: WRIGHT KILKENNY, and TRASK, Circuit Judges. WRIGHT, Circuit Judge:

In this Title VII action the Equal Employment Opportunity Commission (EEOC) appeals from the district court's order of dismissal. We reverse and remand.

I.
PROCEEDINGS BELOW

On December 27, 1970, Tamar Edelson filed with the EEOC a charge against Occidental Life Insurance Company (Occidental), alleging that she had been discriminated against because of her sex. She specified that "the most recent date on which this discrimination took place" was October 1, 1970, the date of her discharge by Occidental.

The EEOC referred the charge to the California Fair Employment Practices Commission, in accordance with the provisions of Section 706(c) [42 U.S.C. § 2000e-5(c)]. When that agency took no action, the charge was formally filed with the EEOC on March 9, 1971.

The EEOC undertook an investigation and, on February 25, 1972, its District Director issued Findings of Fact that Occidental had discriminated against Ms. Edelson and also had discriminated against many other

employees through a variety of practices and policies. Occidental filed exceptions to the findings on March 23, 1972. The EEOC issued its "Reasonable Cause" Determination on February 8, 1973 and during the following year, held a conciliation meeting with Occidental.

When that effort proved unsuccessful, the EEOC filed this action in district court on February 22, 1974.

That court granted Occidental's motion to dismiss, finding that:

1. The EEOC has no authority to file suit more than 180 days after the filing of the underlying charge, or where, as here, the charge was filed prior to the 1972 amendments to Title VII of the Civil Rights Act of 1964, more than 180 days after the effective date of such amendments;
2. Alternatively, the EEOC was barred from filing this suit by the California statute of limitations;
3. Alternatively, the EEOC was barred from proceeding on paragraphs 8(b) and 9(c) of its complaint because the allegations contained therein were outside the scope of the underlying charge; and
4. In any event, the EEOC was barred from seeking back pay for any alleged violations occurring more than two years prior to the filing of the underlying charge.

By its appeal herein, the EEOC challenges only the first three findings by the court.

We hold:

(1) The 180-day language of Section 706(f)(1) [42 U.S.C. § 2000e-5(f)(1)] does not constitute a limitation upon the EEOC's ability to sue in its own name;

(2) This action is not barred by any state limitations period; and

(3) The EEOC properly included subparagraphs 8(b) and 9(c) in its complaint.

II.
THE 180-DAY LANGUAGE OF SECTION 706 (f)(1)

Section 706(f)(1) [42 U.S.C. § 2000e-5(f)(1)] states in pertinent part:[1]

> . . . [I]f within one hundred and eighty days from the filing of such charge . . . the [EEOC] has not filed a civil action under this section . . . the [EEOC] . . . shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the [EEOC], by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice.

The district court found that the above statute precluded the EEOC from bringing this action.

The statute on its face contains no express limitation upon suit *by the EEOC*. Rather, it precludes civil

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[1]Before the 1972 amendment of Section 706(f)(1), the relevant time periods were 30 days for both the filing of the charge with the EEOC, and filing suit after receipt of a right-to-sue letter.

action by the charging party for 180 days so that the EEOC may during that period pursue conciliation.[2] If, after 180 days, the EEOC has neither filed a civil action nor achieved conciliation, the charging party may demand a "right-to-sue" letter. On receipt of it, the charging party has 90 days within which to sue. Should such private action be filed, the EEOC would apparently be restricted to intervention.[3]

However, should the person concerned choose not to sue during the allotted 90 days, the EEOC is not prohibited from suing thereafter. The statute in no way limits the time within which it must sue, so long as the charging party has not done so.[4]

This issue has been before the Courts of Appeals for the Third, Fourth, Fifth, Sixth, Eighth and Tenth Circuits. All have ruled that Section 706(f)(1) [42 U.S.C. § 2000e-5(f)(1)] does not preclude suit by the EEOC after the 180-day period has run.[5]

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[2]The charging party may sue before the 180-day period has run if:

(a) The EEOC finds no reasonable cause during that time period [42 U.S.C. § 2000e-5(b)]; or

(b) The EEOC dismisses the charge during that time period [42 U.S.C. § 2000e-5(f)(1)].

[3]H.R. Rep. No. 92-238, 92nd Cong., 1st Sess. 12 (1971), 1972 U.S.C.C.A.N. 2148, *quoted in Equal Employment Opportunity Comm'n v. Duval Corp.*, 528 F.2d 945, 948 n. 4 (10th Cir. 1976).

[4]The sole exception is that the EEOC must wait 30 days from the filing of the charge before filing suit. [42 U.S.C. § 2000e-5(f)(1)].

[5]*Equal Employment Opportunity Comm'n v. Duval Corp.*, 528 F.2d 945, 947 (10th Cir. 1976); *Equal Employment Opportunity Comm'n v. Meyer Bros. Drug Co.*, 521 F.2d 1364, 1365 (8th Cir. 1975); *Equal Employment Opportunity Comm'n v. E.I. duPont de Nemours and Co.*, 516 F.2d 1297 (3rd Cir. 1975); *Equal Employment Opportunity Comm'n v. Kimberly-Clark Corp.*, 511 F.2d 1352, 1356-59 (6th Cir. 1975); *Equal Employment Opportunity Comm'n v. Louisville and Nashville R.R.*, 505 F.2d 610 (5th Cir. 1974); *Equal Employment Opportunity Comm'n v. Cleveland Mills*, 502 F.2d 153 (4th Cir. 1974). *See also Equal Employment Opportunity Comm'n v. Local 41, Bartenders' International Union*, 369 F. Supp. 827, 829-31 (N.D. Cal. 1973).

Finding this avalanche of authority most persuasive, we adopt the rule that the 180-day language of Section 706(f)(1) does not constitute a limitation upon the EEOC's ability to sue in its own name. We conclude that the district court erred in barring this suit on the basis of the 180-day language in Section 706(f)(1).

III.
APPLICABILITY OF RELEVANT STATE LIMITATIONS PERIOD

The district court held alternatively that the EEOC suit was barred by the one-year California statute of limitations found in California Code of Civil Procedure §340(3).

We have already determined that Section 706(f)(1) [42 U.S.C. § 2000e-5(f)(1)] does not require the EEOC to file suit within 180 days of the date the private charge is filed with that agency. There being no other portion of Title VII susceptible of interpretation as a limitation on the time within which the EEOC must bring suit, we find that there is simply no governing federal limitations period. *See Equal Employment Opportunity Comm'n v. Griffin Wheel Co.*, 511 F.2d 456, 458, *aff'd on rehearing*, 521 F.2d 223, (5th Cir. 1975).

It is well established that in a *private* civil rights action, where Congress has not provided a statute of limitations, the state statute applied to similar liti-

gation will be applied to the federal action. *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 462 (1975), and cases cited therein; *Griffin v. Pacific Maritime Ass'n*, 478 F.2d 1118, 1119 (9th Cir. 1973).

In its complaint the EEOC seeks both injunctive relief and back pay. By its prayer for injunctive relief the EEOC promotes *public* policy and seeks to vindicate rights belonging to the United States as sovereign. Thus, the EEOC's request for injunctive relief is not subject to any state limitations period. *Griffin Wheel, supra*, 511 F.2d at 459; *Kimberly-Clark, supra*, 511 F.2d at 1359-60. *Cf. United States v. Summerlin*, 310 U.S. 414 (1940). The district court erred insofar as it barred EEOC's request for injunctive relief on the basis of the California limitations period.[6]

We consider the request for back pay. Occidental argues that, even though the EEOC is party plaintiff, "[i]nsofar as the . . . suit constitutes a proper legal conduit for the recovery of sums due individual citizens rather than the treasury, it is a private and not a public action." *United States v. Georgia Power*, 474 F.2d 906, 923 (5th Cir. 1973), *quoted in Griffin Wheel, supra*, 511 F.2d at 458.

Since we cannot agree that EEOC's request for back pay must be treated as "private" in nature, we believe the district court erred in applying the California limitations period to bar the back pay request.

Our starting point is the recent statement of the Supreme Court in *Franks v. Bowman Transp. Co.*, ... U.S. ...., 44 USLW 4356 (Mar. 24, 1976): "[C]laims

[6]We express no opinion as to which, if any, state limitations statute would apply had an individual or a class, rather than the EEOC, been party plaintiff.

under Title VII involve the vindication of a major public interest. . . ." *Id.* at ..... n.40, 44 USLW at 4365 n.40, *quoting* Section-By-Section Analysis, accompanying the Equal Employment Opportunity Act of 1972—Conference Report, 118 Cong. Rec. 7166, 7168 (1972).

The Court in *Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975), discussed in some detail the nature of Title VII claims for backpay:

> As the Court observed in *Griggs v. Duke Power Co.*, 401 U.S., at 429-430, the primary objective [of Title VII] was a prophylactic one:
>
> > "It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an indentifiable group of white employees over other employees."
>
> Backpay has an obvious connection with this purpose. If employers faced only the prospect of an injunctive order, they would have little incentive to shun practices of dubious legality. It is the reasonably certain prospect of a backpay award that "provide[s] the spur or catalyst which causes employers and unions to self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges of an unfortunate and ignominious page in this country's history." *United States v. N. L. Industries, Inc.*, 479 F.2d 354, 379 (CA8 1973).
>
> It is *also* the purpose of Title VII to make persons whole for injuries suffered on account of unlawful employment discrimination.

Id. at 417-18. (Emphasis added.)

That an award of back pay promotes the primary statutory objective of deterrence[7] was also noted by the Sixth Circuit in *Meadows v. Ford Motor Company*, 510 F.2d 939, 948 (6th Cir. 1975).

The *Moody* Court noted that "[t]he backpay provision [of Title VII] was expressly modeled on the backpay provision of the National Labor Relations Act." 422 U.S. at 419 and n.11. It is established doctrine that a back pay order under Section 10(c) of the National Labor Relations Act [29 U.S.C. § 160(c)] " 'is a reparation order designed to vindicate the public policy of the statute by making the employees whole for losses suffered on account of an unfair labor practice.' " *National Labor Relations Board v. J. H. Rutter-Rex. Mfg. Co.*, 396 U.S. 258, 263 (1969), *quoting Nathanson v. National Labor Relations Board*, 344 U.S. 25, 27 (1952).

It is true, of course, that whenever a party obtains relief under a federal statute, public policy is vindicated even though direct, immediately cognizable benefits may flow only to the individual. Thus, for example, a private action under Title 42 U.S.C. § 1981 is subject to state limitations periods despite the fact that such recovery may be said to promote the public policy embodied in the statute. *See Johnson, supra,* 421 U.S. 454 (1975).

But certain federal acts, such as the National Labor Relations Act, are intended to be broadly prophylactic

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[7]The Court in *Moody* stated that

> "backpay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy *and* making persons whole for injuries suffered through past discrimination."

422 U.S. at 421. (Emphasis added.)

as well as remedial. *See* Section 1 [29 U.S.C. § 151]. Several circuits, including our own, have recognized that back pay orders promote the prophylactic as well as the remedial purposes of the National Labor Relations Act.[8]

The National Labor Relations Board (NLRB) does not pursue the "adjudication of private rights." Rather, it "acts in a public capacity to give effect to the declared public policy of the Act. . . ." *National Licorice Co. v. National Labor Relations Board,* 309 U.S. 350, 362 (1940). "The fact that these proceedings [may] operate to confer an incidental benefit on private persons does not detract from this public purpose." *Nabors v. National Labor Relations Board,* 323 F.2d 686, 688-89 (5th Cir. 1963).

Accordingly, the NLRB, as an agency of the United States seeking enforcement of public rights, is not bound by state limitations statutes even when seeking back pay. *Nabors, supra,* at 688. *See also J. H. Rutter-Rex Mfg. Co. v. National Labor Relations Board,* 399 F.2d 356, 358, 362, 364 (5th Cir. 1968), *rev'd on other grounds,* 396 U.S. 258 (1969).[9]

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[8]*Marriott Corp. v. National Labor Relations Board,* 491 F.2d 367, 371 (9th Cir. 1974); *National Labor Relations Board v. United Marine Division, Local 33, National Maritime Union, AFL-CIO,* 417 F.2d 865, 868 (2nd Cir. 1969); *Trinity Valley Iron & Steel Co. v. National Labor Relations Board,* 410 F.2d 1161, 1168 (5th Cir. 1969); *Nabors v. National Labor Relations Board,* 323 F.2d 686, 688-89 (5th Cir. 1963).

[9]In *Rutter-Rex,* after ruling that state limitations statutes did not apply to the NLRB's action, the Fifth Circuit modified the Board's order because of inordinate administrative delay to the prejudice of defendant. The Supreme Court reversed and ordered enforcement of the back pay order in its entirety. In doing so, the Court assumed the inapplicability of state limitations periods.

The Civil Rights Act of 1964 grew out of Congressional awareness of the continued, pervasive discrimination against minorities, particularly Negroes, in voting, access to public facilities, public education and employment. As the Committee on the Judiciary of the House of Representatives reported:

> Considerable progress has been made in eliminating discrimination in many areas. . . . Nevertheless, in the last decade it has become increasingly clear that progress has been too slow and that national legislation is required to meet a national need which becomes ever more obvious. . . . [This Act] is designed as a step toward eradicating significant areas of discrimination on a nationwide basis. It is general in application and national in scope.

H. Rep. No. 914, 1964 U.S.C.C.A.N. 2391, 2393 (1964).

Thus, despite the existence in 1964 of such remedial statutes as the Civil Rights Acts of 1866, 1870 and 1871 [42 U.S.C. §§ 1981-88], Congress believed that some additional federal action was necessary to further the public objective of elimination of nationwide discrimination.[10] It decided that this objective could best be pursued by federal agency enforcement.

The original Section 706 of the Civil Rights Act of 1964, 78 Stat. 259-61, established an enforcement scheme to be implemented primarily by the EEOC. In 1972 Congress made it even more clear that "the

[10]In *Johnson, supra,* the Court made clear the "separate, distinct and independent" remedies available under Title 42 U.S.C. § 1981 on the one hand, and Title VII on the other. 421 U.S. at 461.

vast majority of complaints will be handled through the offices of the EEOC or the Attorney General. . . ." Section-By-Section Analysis, *supra,* 118 Cong. Rec. at 7168.

The basic function of the EEOC, as with the NLRB, is to prevent and eliminate unlawful employment "practices and devices," primarily through "conference, conciliation, and persuasion." *Alexander v. Gardner-Denver Co.,* 415 U.S. 36, 44 (1974); Section 706(a) & (b) [42 U.S.C. § 2000e-5(a) & (b)]. The EEOC has the power to investigate, promote voluntary compliance, and bring suit upon failure of conciliation efforts.[11]

The EEOC vindicates public policy by suing in federal court, as does the NLRB by seeking enforcement of its orders in the courts of appeals. This is so regardless of the type of relief sought by either. As in labor law, so in Title VII law, the fact that private parties may benefit from public agency action does not detract from the public nature of those proceedings.

We are aware that the Fifth Circuit has reached a contrary result in at least two cases. *Griffin Wheel, supra,* 511 F.2d at 458-59; *Georgia Power, supra,* 474 F.2d at 922-23. We decline to follow its lead.

Both of those cases were decided before the Supreme Court decisions in *Moody, supra,* and *Franks, supra.* Moreover, the court in *Georgia Power,* 474 F.2d at 921, relied on the decision of the Supreme Court in *Rutter-Rex, supra,* but ignored the Court's statement therein that "back pay . . . is . . . designed to vindicate . . . public policy. . . ." 396 U.S. at 263.

[11]Unlike the NLRB, the EEOC has no adjudicative powers. Yet the NLRB must itself seek court enforcement of its orders.

Occidental directs our attention to the Court's decision in *Johnson, supra*. The Court there held that a federal cause of action under Title 42 U.S.C. § 1981 was governed by "the most appropriate [limitation period] provided by state law." 421 U.S. at 462. However, *Johnson* involved a private claimant litigating under Section 1981, while this case involves a public agency enforcing Title VII rights.

Also, the *Johnson* Court did not qualify its holding according to the type of relief sought. Indeed, by discussing the availability under Section 1981 of "both equitable and legal relief," 421 U.S. at 460, the Court intimated that state limitations periods would apply to private actions brought under Section 1981, regardless of the type of relief sought.

Earlier in this opinion we joined the Fifth and Sixth Circuits, in *Griffin Wheel* and *Kimberly-Clark* respectively, in ruling that state limitations periods do not govern the EEOC's request for injunctive relief. Nothing in *Johnson* dictates a contrary conclusion. Similarly, *Johnson* does not preclude us from concluding that a request by the EEOC for back pay, in vindication of public policy, is likewise immune from state limitations[12] periods.[13]

There are sound practical considerations in support of our conclusion. First, subjecting the EEOC to state

[12]It appears that the EEOC would likewise be immune from the defense of laches. *Cf. United States v. Summerlin*, 310 U.S. 414, 416 (1940); *Nabors v. National Labor Relations Board*, 323 F.2d 686, 688 (5th Cir. 1963). *But see Griffin Wheel, supra*, 511 F.2d at 459 n.5; *Georgia Power, supra*, 474 F.2d at 923. However, since the issue was not raised herein, we need not address it.

[13]The court in *Kimberly-Clark* seemed to so conclude, although it did not make clear what type of relief was at issue. 511 F.2d at 1359-60.

limitations periods, often as short as one year,[14] would frustrate its attempts to resolve disputes by means of administrative "conference, conciliation, and persuasion," [42 U.S.C. § 2000e-5(b)], rather than by court action.[15]

Second, it would be cumbersome to determine the applicability of state limitations statutes according to the type of relief sought. As the Sixth Circuit stated in *Meadows, supra*, 510 F.2d at 945-46:

> "[Back pay] may not properly be viewed as a mere adjunct of some more basic equity. It is properly viewed as an integral part of the whole of relief which seeks not to punish the respondent but to compensate the victim of discrimination."

It is unreasonable to give the EEOC an open ticket for equitable relief, but to impose time constraints on back pay claims even though they are "an integral part of the whole of relief" sought.

Third, Section 706(g) [42 U.S.C. § 2000e-5(g)] provides: "Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission [EEOC]." Thus, an employer need not produce past employment records except for the period of time the charge is pending, and the preceding two years.

Finally, despite the absence of a controlling federal limitations period, at least two factors are at work

[14]*See, e.g., Johnson, supra*, 421 U.S. at 462 & n.7; *Griffin Wheel, supra*, 511 F.2d at 459.

[15]Clearly the cause of action "accrues" on the last date on which the allegedly unlawful act or practice occurs. *Collins v. United Airlines, Inc.*, 514 F.2d 594, 596 & n.2 (9th Cir. 1975); *Griffin Wheel, supra*, 511 F.2d at 459 n.6. *Cf. Johnson, supra*, 421 U.S. at 462.

to minimize EEOC dalliance. First, the charging party may demand a right-to-sue letter should the EEOC fail to obtain voluntary compliance or to sue within 180 days of the original filing. Section 706(f)(1) [42 U.S.C. § 2000e-5(f)(1)]; *Johnson, supra,* 421 U.S. at 458. Second, in extreme cases a federal district court could compel agency action. *See* Sections 6(b) and 10e(A) of the Administrative Procedure Act [5 U.S.C. §§ 555(b), 706(1)]. *Cf. National Labor Relations Board v. J. H. Rutter-Rex Mfg. Co.,* 396 U.S. 258, 266 & n. 3 (1969) (dictum).

We conclude that the district court erred insofar as it barred the EEOC's back pay claim on the basis of the California limitations period.

IV.

SCOPE OF THE EEOC'S COMPLAINT

In her original charge filed with the EEOC, Ms. Edelson alleged that Occidental refused, on account of sex, to provide her with maternity leave, other pregnancy benefits, insurance, vacation benefits and seniority rights.

In the course of its investigation the EEOC discovered apparent discrimination against unmarried female employees in the distribution of "pregnancy-related benefits." It also discovered apparent discrimination against male employees in the administration of the retirement system. Although these forms of alleged discrimination were not mentioned in the original charge, the EEOC included them in subparagraphs 8(b) and 9(c) of its complaint. Occidental argued successfully below that these charges should be dismissed as being outside the scope of the original charge.

As amended in 1972, Section 710 of Title VII provides:

> For the purpose of all hearings and investigations conducted by the [EEOC] or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply.

[86 Stat. 109; 42 U.S.C. § 2000e-9]

While the investigation in this case preceded the 1972 amendment of Section 710, it is clear that the prior statute was similar in scope. *See Motorola, Inc. v. McLain,* 484 F.2d 1339, 1342-44 (7th Cir. 1973); *Graniteville Co. v. Equal Employment Opportunity Comm'n,* 438 F.2d 32, 39 (4th Cir. 1971).

Section 11(1) of the National Labor Relations Act [29 U.S.C. § 161(1)] provides in part that the NLRB may gain access to "any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question." This language was given a broad reach in *National Labor Relations Board v. Wyman-Gordon Co.,* 394 U.S. 759, 768 (1969).

Section 709(a) of Title VII [42 U.S.C. § 2000e-8(a)] today provides, as it did in 1964:

> In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

Had Occidental believed that the EEOC's investigation exceeded the permissible statutory scope, it could have refused the EEOC's demand for access and sought adjudication of its rights.[16] Occidental did not do so. Thus we can only conclude that the EEOC investigation was reasonable and that the information supporting the allegations in subparagraphs 8(b) and 9(c) was acquired during that reasonable investigation.

In *Equal Employment Opportunity Comm'n v. General Electric Co.*, ... F.2d ...., ... (4th Cir. Jan. 22, 1976), the Fourth Circuit held:

> *So long as* [*discovery of*] *the new discrimination arises out of the reasonable investigation of the charge filed,* it can be the subject of a "reasonable cause" determination, to be followed by an offer by the Commission of conciliation, and, if conciliation fails, by a civil suit, without the filing of a new charge on such claim of discrimination. In other words, the original charge is sufficient to support action by the EEOC as well as a civil suit under the Act for *any discrimination stated in the charge itself or* [*discovered*] *in the course of a reasonable investigation of that charge,* provided such discrimination was included in the reasonable cause determination of the EEOC and was followed by compliance with the conciliation procedures fixed in the Act.

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[16]*See Local No. 104, Sheet Metal Workers International Ass'n v. Equal Employment Opportunity Comm'n,* 439 F.2d 237, 241-43 (9th Cir. 1971); *Circle K Corp. v. Equal Employment Opportunity Comm'n,* 501 F.2d 1052 (10th Cir. 1974); *Joslin Dry Goods Co. v. Equal Employment Opportunity Comm'n,* 483 F.2d 178 (10th Cir. 1973); *Motorola, Inc. v. McLain, supra; Graniteville Co., supra.*

(Emphasis in original.) *Accord, Equal Employment Opportunity Comm'n v. Huttig Sash & Door Co.,* 511 F.2d 453, 455 (5th Cir. 1975); *Equal Employment Opportunity Comm'n v. Kimberly-Clark Corp.,* 511 F.2d 1352, 1363 (6th Cir. 1975). We agree with the reasoning of the Fourth, Fifth and Sixth Circuits.[17]

In this case, Occidental received adequate notice during administrative investigation of the substance of the issues subsequently raised in subparagraphs 8(b) and 9(c) of the EEOC's complaint. Reference was made to those issues in both the District Director's Findings of Fact (February 25, 1972), and the EEOC's Determination of Reasonable Cause (February 8, 1973). Thus the EEOC complied with the statute by presenting these issues for conciliation. *See* Section 706(f)(1) [42 U.S.C. § 2000e-5(f)(1)].

We note that the EEOC itself could independently bring charges based upon the information it reasonably acquired during the investigation of Ms. Edelson's charge. *See* Section 706(b) [42 U.S.C. § 2000e-5(b)]. To require the EEOC to pursue that route, rather than allowing it to include the new charges along with the original one in a single Determination of

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[17]In so agreeing we do not depart in any respect from our recent decision in *Oubichon v. North American Rockwell Corp.,* 482 F.2d 569 (9th Cir. 1973), in which we stated:

> "When an employee seeks judicial relief for incidents not listed in his original charge to the EEOC, the judicial complaint nevertheless may encompass any discrimination like or reasonably related to the allegations of the EEOC charge, including new acts occurring during the pendency of the charge before the EEOC."

Id. at 571.

Oubichon involved the complaint of a private party, he being subject to traditional notions of standing. We deal here with a complaint filed by a public agency seeking vindication of public rights.

Reasonable Cause, would be to champion form over substance and to generate "an inexcusable waste of valuable administrative resources" and "intolerable delay," in violation of statutory purpose. *General Electric, supra,* .... F.2d at ...., 11 C.C.H.—Empl. Prac. Dec. at 6614.

It remains true that Ms. Edelson would not have had "standing" to charge Occidental with discrimination against unmarried female employees (Ms. Edelson was married), or against male employees with respect to retirement. However, as we have discussed earlier, the EEOC is charged with the vindication of public policy, not merely with the enforcement of private rights. In this case, enforcement by the EEOC of the objectives to Title VII should not be frustrated because a private charging party may not have had "standing" to make a particular claim.

Finally, it is argued that "amendment" by the EEOC of the original charge may operate to the detriment of the charging party. In this case such a result is speculative. In any case, the charging party should be able to intervene in either the administrative or judicial proceeding to insure that his or her rights are fully protected. *See* Section 706(f)(1) [42 U.S.C. § 2000e-5(f)(1)].

For the above reasons, we conclude that the district court erred in dismissing subparagraphs 8(b) and 9(c) of the EEOC's complaint.

V.
CONCLUSION

The judgment of the district court is reversed and the cause is remanded for further proceedings consistent with this opinion.

Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as Amended, 42 U.S.C. Section 2000e-5(f)(1) (1976).

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of

reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has notified a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved, or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivisoin, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.